

Title 36: TAXATION
Chapter 819: FRANCHISE TAX

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Maine Revised Statutes
Title 36: TAXATION
Chapter 819: FRANCHISE TAX

§5205. FRANCHISE TAX ON BANKING CORPORATIONS AND LOAN ASSOCIATIONS

(REPEALED)

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). 1973, c. 580, §3 (AMD). 1973, c. 592, §22A (AMD). 1973, c. 788, §194 (RPR). 1977, c. 686, §13 (AMD). 1981, c. 698, §186 (RP).

§5206. FRANCHISE TAX ON FINANCIAL INSTITUTIONS

A tax is imposed for each calendar year or fiscal year ending during that calendar year upon the franchise or privilege of doing business in this State of every financial institution that has Maine net income or Maine assets and that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. A financial institution is subject to tax under this section even if it is treated as a partnership, S corporation or entity disregarded as separate from its owner for federal income tax purposes under the Code. Each financial institution shall determine the tax due using one of the following methods: [2005, c. 608, §5 (AFF); 2005, c. 608, §1 (RPR).]

1. Franchise tax on Maine net income and Maine assets. The sum of:

A. One percent of the financial institution's Maine net income; and [2005, c. 608, §1 (NEW); 2005, c. 608, §5 (AFF).]

B. Eight cents per \$1,000 of the financial institution's Maine assets; or [2005, c. 608, §1 (NEW); 2005, c. 608, §5 (AFF).]

[2005, c. 608, §5 (AFF); 2005, c. 608, §1 (RPR) .]

2. Franchise tax on Maine assets only. Thirty-nine cents per \$1,000 of the financial institution's Maine assets.

[2005, c. 608, §5 (AFF); 2005, c. 608, §1 (RPR) .]

3. Credit against tax.

[2005, c. 608, §5 (AFF); 2005, c. 608, §1 (RP) .]

4. Increase in franchise tax.

[1985, c. 783, §34 (RP) .]

Each financial institution subject to the tax under this chapter shall elect to calculate and pay tax under the method in subsection 1 or 2. The financial institution shall make the election on its annual state tax return and the election cannot be revoked with respect to that tax year. If a financial institution fails to make an election, the method established in subsection 1 must be used and is deemed an election for purposes of this section. [2005, c. 608, §1 (NEW); 2005, c. 608, §5 (AFF).]

In each taxable year in which a financial institution sustains a book net operating loss, a credit must be allowed against the franchise tax on assets under subsection 1. The credit must be computed by multiplying the book net operating loss by the applicable franchise tax rate imposed by subsection 1, paragraph A. The total amount of any credit allowed may not exceed the franchise tax on assets due under subsection 1, paragraph B. In any tax year in which there is excess credit, the excess credit must be carried forward for no more than the next 5 tax years and may be applied against the tax computed under subsection 1. [2005, c. 608, §1 (NEW); 2005, c. 608, §5 (AFF).]

SECTION HISTORY

1977, c. 686, §14 (NEW). 1979, c. 587, §5 (AMD). 1981, c. 704, §§6,7,10 (AMD). 1983, c. 477, Pt. F, Subpt. 3, §2 (AMD). 1983, c. 590, §3 (AMD). 1983, c. 842, §2 (RPR). 1983, c. 855, §§23,24 (AMD). 1983, c. 862, §§89,90 (AMD). 1985, c. 783, §§33,34 (AMD). 1997, c. 404, §2 (AMD). 1997, c. 404, §10 (AFF). 1997, c. 746, §14 (AMD). 1997, c. 746, §24 (AFF). 2005, c. 608, §5 (AFF). 2005, c. 608, §1 (RPR).

§5206-A. UTILIZATION OF NET OPERATING LOSS CARRY FORWARD

(REPEALED)

SECTION HISTORY

1981, c. 704, §8 (NEW). 1983, c. 480, §A66 (AMD). 1983, c. 842, §3 (RPR). 1997, c. 404, §10 (AFF). 1997, c. 404, §3 (RP).

§5206-B. DEFINITIONS

(REPEALED)

SECTION HISTORY

1983, c. 842, §4 (NEW). 1985, c. 783, §35 (AMD). 1987, c. 497, §50 (AMD). 1987, c. 841, §§6,7 (AMD). 1995, c. 628, §§36,37 (AMD). 1995, c. 628, §39 (AFF). 1997, c. 404, §10 (AFF). 1997, c. 404, §4 (RP).

§5206-C. REFUNDS

(REPEALED)

SECTION HISTORY

1983, c. 842, §5 (NEW). 1987, c. 504, §29 (RP).

§5206-D. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

1. Affiliated group. "Affiliated group" means a group of 2 or more financial institutions in which more than 50% of the voting interest of each member financial institution is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member financial institutions.

[1997, c. 746, §15 (AMD); 1997, c. 746, §24 (AFF) .]

2. Billing address. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year or on a later date in the taxable year when the customer relationship began as the address where any notice, statement or bill relating to a customer's account is mailed.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

3. Borrower or credit card holder located in this State. "Borrower or credit card holder located in this State" means:

A. A borrower, other than a credit card holder, that is engaged in a trade or business that maintains commercial domicile in this State; or [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

B. A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this State. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

4. Commercial domicile. "Commercial domicile" means the place from which trade or business is principally managed and directed.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

5. Compensation. "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. "Compensation" includes amounts paid to an employee-leasing company for leased employees and amounts paid to a temporary services company for temporary employees, pursuant to a contract between the taxpayer and an employee-leasing company or temporary services company.

[2001, c. 439, Pt. D, §3 (AMD); 2001, c. 439, Pt. D, §9 (AFF) .]

6. Credit card. "Credit card" means a credit, travel or entertainment card.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

7. Credit card issuer's reimbursement fee. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

7-A. Employee-leasing company. "Employee-leasing company" means a business that contracts with client companies to supply workers to perform services for client companies, except that the term "employee-leasing company" does not include private employment agencies that provide workers to client companies on a temporary help basis.

[2001, c. 439, Pt. D, §4 (NEW); 2001, c. 439, Pt. D, §9 (AFF) .]

8. Financial institution. "Financial institution" means:

A. A financial institution authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A, including, without limitation, a trust company; [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

B. A bank, savings bank, industrial bank, savings and loan association or any other entity, excluding a credit union authorized to do business in this State as defined in Title 9-B, section 131, subsection 12-A, that accepts deposits that are insured by an agency of the Federal Government; [1999, c. 414, §42 (AMD).]

C. A bank holding company, as defined in the federal Bank Holding Company Act of 1956, 12 United States Code, Section 1841, or a savings and loan holding company, as defined in 12 United States Code, Section 1467a(a)(1)(D); or [1999, c. 708, §42 (AMD).]

D. A corporation or other entity more than 50% of the voting interest of which is owned, directly or indirectly, by any one or more of the organizations defined in this subsection or by a credit union authorized to do business in this State as defined in Title 9-B, section 131, subsection 12-A. [1997, c. 746, §16 (AMD); 1997, c. 746, §24 (AFF).]

[1999, c. 708, §42 (AMD) .]

8-A. Leased employee. "Leased employee" means an individual who performs services for a client company pursuant to a contract between the client company and an employee-leasing company.

[2001, c. 439, Pt. D, §4 (NEW); 2001, c. 439, Pt. D, §9 (AFF) .]

9. Loan. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of the extension of credit from another. "Loan" includes participations, syndications and leases treated as loans for federal income tax purposes. "Loan" does not include properties treated as loans under the Code, Section 595 as of December 31, 1995; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest-bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC or other mortgage-backed or asset-backed security; and other similar items.

[2005, c. 618, §9 (AMD) .]

10. Loan secured by real property. "Loan secured by real property" means that 50% or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

11. Located in the State. For purposes of the receipts factor in section 5206-E, subsection 2, "located in the State":

A. In reference to a loan that is secured by real property, means that more than 50% of the fair market value of the real property is located within this State or, if more than 50% of the fair market value of the real property is not located within any one state, that the borrower is located in this State; [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

B. In reference to a loan that is not secured by real property, means that the borrower is located in this State; [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

C. In reference to a credit card receivable, means that the credit card holder is located in this State; or [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

D. In reference to real and tangible personal property, means that it is physically present in this State, except that transportation property is located within this State to the extent that the property is used in this State. The extent an aircraft is considered to be used in the State is determined by computing a fraction, the numerator of which is the number of landings of the aircraft in this State and the denominator of which is the total number of landings of the aircraft within and outside of the State. If

the extent of the use of any transportation property within this State can not be determined, the property is considered to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is considered to be used wholly in the state in which it is registered. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

12. Maine assets. "Maine assets" means a financial institution's total end-of-year assets required to be reported pursuant to the laws of the United States on Internal Revenue Service Form 1120, 1120S, 1065 or any other Internal Revenue Service form used to report end-of-year assets or, in the case of an entity with a single owner that may be disregarded as an entity separate from its owner pursuant to Internal Revenue Service regulations, the financial institution's total end-of-year assets determined as if the entity were required to file Internal Revenue Service Form 1065, multiplied by the fraction obtained pursuant to section 5206-E. In the case of a financial institution that is a qualified subchapter S subsidiary as defined by the Code, Section 1361, the financial institution's "Maine assets" means total end-of-year assets determined as if the entity were required to file Internal Revenue Service Form 1120S, multiplied by the fraction obtained pursuant to section 5206-E.

[1999, c. 414, §43 (AMD); 1999, c. 414, §57 (AFF) .]

13. Maine net income. "Maine net income" means, for any taxable year, a financial institution's net income or loss per books required to be reported pursuant to the laws of the United States on Internal Revenue Service Form 1120, 1120S, 1065 or any other Internal Revenue Service form used to report net income or loss per books or, in the case of an entity with a single owner that may be disregarded as an entity separate from its owner pursuant to Internal Revenue Service regulations, the financial institution's net income or loss per books determined as if the entity were required to file Internal Revenue Service Form 1065, and apportioned to this State under section 5206-E. In the case of a financial institution that is a qualified subchapter S subsidiary as defined by the Code, Section 1361, the financial institution's "Maine net income" means a financial institution's net income or loss per books determined as if the entity were required to file Internal Revenue Service Form 1120S and apportioned to this State under section 5206-E.

To the extent that a financial institution derives income from a unitary business carried on by 2 or more members of an affiliated group, "Maine net income" is determined by apportioning, in accordance with section 5206-E, that part of the net income of the entire group that derives from the unitary business.

[1999, c. 414, §43 (AMD); 1999, c. 414, §57 (AFF) .]

14. Merchant discount. "Merchant discount" means the fee or negotiated discount charged to a merchant by the taxpayer for privilege of participating in a program when a credit card is accepted in payment for merchandise or services sold to the card holder.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

15. Participation. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

16. Principal base of operations. With respect to transportation property, "principal base of operations" means the place of more or less permanent nature from which the property is regulated, directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent

nature from which the employee regularly starts the employee's work and to which the employee customarily returns in order to receive instructions from an employer, communicates with the employer's customers or other persons or performs any other functions necessary to the exercise of the employee's trade or profession.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

17. Regular place of business. "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and that is continuously maintained, occupied and used by employees of the taxpayer.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

18. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

19. Syndication. "Syndication" means an extension of credit in which 2 or more persons fund that credit and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

20. Taxpayer. "Taxpayer" means a financial institution as defined in subsection 8.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

20-A. Temporary help. "Temporary help" means employee services provided to client companies for a contractual period of less than 12 months.

[2001, c. 439, Pt. D, §4 (NEW); 2001, c. 439, Pt. D, §9 (AFF) .]

20-B. Temporary services company. "Temporary services company" means a private employment agency, other than an employee-leasing company, that provides workers to client companies on a temporary help basis.

[2001, c. 439, Pt. D, §4 (NEW); 2001, c. 439, Pt. D, §9 (AFF) .]

21. Transportation property. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to those vehicles and vessels, such as rolling stock, barges or trailers.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

22. Unitary business. "Unitary business" means a business activity that is characterized by unity of ownership, functional integration, centralization of management and economies of scale.

[1999, c. 414, §44 (AMD) .]

SECTION HISTORY

1997, c. 404, §5 (NEW). 1997, c. 404, §10 (AFF). 1997, c. 746, §§15-17 (AMD). 1997, c. 746, §24 (AFF). 1999, c. 414, §§42-44 (AMD). 1999, c. 414, §57 (AFF). 1999, c. 708, §42 (AMD). 2001, c. 439, §§D3,4 (AMD). 2001, c. 439, §D9 (AFF). 2005, c. 618, §9 (AMD).

§5206-E. APPORTIONMENT

Except as otherwise specifically provided, a financial institution that is taxable both in and outside this State shall apportion its net income and end-of-year assets as provided in this section. A financial institution is considered taxable in a state if in that state the financial institution is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax or that state has jurisdiction to subject the financial institution to a net income tax regardless of whether, in fact, the state does or does not tax the financial institution. [2005, c. 608, §2 (AMD); 2005, c. 608, §5 (AFF).]

1. Formula applicable. All of a financial institution's net income and end-of-year assets are apportioned to this State by multiplying the income and the assets by a fraction, the numerator of which is the property factor plus the payroll factor plus 2 times the receipts factor and the denominator of which is 4.

[2005, c. 608, §3 (AMD); 2005, c. 608, §5 (AFF).]

2. Receipts factor. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this State during the taxable year and the denominator of which is the receipts of the taxpayer in and outside this State during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor includes only those receipts described in this subsection that are included in the computation of the apportionable income base for the taxable year.

A. The numerator of the receipts factor includes receipts from the lease, sublease or rental of real property if the property is located in the State. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

B. Except as described in this paragraph, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located in this State when it is first placed in service by the lessee.

Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is located in the State. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

C. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans located in the State.

The determination of whether the real property securing a loan is located in the State must be made at the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

D. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the stripped coupon rules of the Code, Section 1286.

The amount of net gains greater than zero from the sale of loans is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph C and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

E. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to credit card holders, such as annual fees, if the billing address of the credit card holder is in this State. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

F. The numerator of the receipts factor includes net gains greater than zero from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph E and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to credit card holders. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

G. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph E and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to credit card holders. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

H. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this State. The receipts are computed net of any credit card holder chargebacks, but are not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its credit card holders. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

I. The numerator of the receipts factor includes loan servicing fees derived from loans multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph C and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans.

In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes the fees if the borrower is located in this State. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

J. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this State. If the service is performed both in and outside this State and a greater proportion of the income or producing activity is performed in this State than in any other state based on cost of performance, then the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

K. Interest, dividends, net gains greater than zero and other income from investment assets and activities and from trading assets and activities must be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options, futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to federal funds, the receipts factor includes only the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements. With respect to trading assets and securities, the receipts factor includes only the amount by which interest, dividends, gains and other income from trading assets and activities, including, but not limited to, assets and activities in the matched books, in the arbitrage book or in foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends and losses from the assets and activities.

The numerator of the receipts factor includes receipts from investment assets and activities and from trading assets and activities described in this paragraph that are attributable to this State. Receipts attributable to this State and included in the numerator are determined by multiplying all the receipts from the assets and activities by a fraction, the numerator of which is the gross income from the assets and activities that are properly assigned to a regular place of business of the taxpayer in this State and the denominator of which is the gross income from all the assets and activities.

Assets are properly assigned to a regular place of business in the State if the day-to-day decisions regarding the asset or activity occurred at a regular place of business in this State. When the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one

regular place of business, the asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, those policies and guidelines are presumed to be established at the commercial domicile of the taxpayer. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

3. Property factor. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located in the State during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located in the State during the taxable year and the average value of the taxpayer's loans and credit card receivables that are located in the State during the taxable year, and the denominator of which is the average value of all such property located in and outside this State during the taxable year.

A. Real and tangible personal property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(1) The average value of property is determined by averaging the values at the beginning and ending of the tax period, but the State Tax Assessor may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(2) Loans are valued at their outstanding principal balance without regard to any reserve for bad debts. If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged off for federal income tax purposes is treated as charged off for purposes of this section.

(3) Credit card receivables are valued at their outstanding principal balance without regard to any reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

B. A loan is considered to be located within this State if it is properly assigned to a regular place of business of the taxpayer in this State. A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business outside the State is presumed to have been properly assigned if:

(1) The taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state requirements;

(2) The assignment on its records is based upon substantive contacts of the loan to a regular place of business; and

(3) The taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

The presumption of proper assignment of a loan provided in this paragraph may be rebutted upon a showing by the State Tax Assessor, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan is then located within this State if the taxpayer had a regular place of business in this State at the time the loan was made and the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur in this State. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

C. In the case of a loan that is assigned by the taxpayer to a place outside this State that is not a regular place of business, it is presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred in this State if, at the time the loan was made, the taxpayer's commercial domicile was in this State.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

D. To determine the state in which the preponderance of substantive contacts relating to the loan has occurred, the facts and circumstances regarding the loan at issue are reviewed on a case-by-case basis and consideration is given to activities as the solicitation, investigation, negotiation, approval and administration of the loan. For purposes of the paragraph, the following terms have the following meanings.

(1) "Solicitation" is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business with which the taxpayer's employee is regularly connected or out of which the employee is working, regardless of where the services of the employee are actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(2) "Investigation" is the procedure by which employees of the taxpayer determine the creditworthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business with which the taxpayer's employees are regularly connected or out of which the employees are working, regardless of where the services of the employees are actually performed.

(3) "Negotiation" is the procedure by which employees of the taxpayer and its customer determine the terms of the agreement, such as the amount, duration, interest rate, frequency of repayment, currency denomination and security required. The activity is located at the regular place of business at which the employees are working, regardless of where the services of the employees are actually performed.

(4) "Approval" is the procedure by which employees or the board of directors of the taxpayer make the final determination of whether to enter into an agreement. The activity is located at the regular place of business with which the taxpayer's employees are regularly connected or out of which the employees are working, regardless of where the services of the employees are actually performed. If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(5) "Administration" is the process of managing the account. This process includes bookkeeping, collecting payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. The activity is located at the regular place of business that oversees this activity.

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

E. For purposes of determining the location of credit card receivables, those receivables are treated as loans and are subject to the provisions of paragraph C. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

F. A loan that has been properly assigned to a state, absent any change of material fact, remains assigned to that state for the length of the original term of the loan. After the length of time of the original term of the loan has expired, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact with a regular place of business in that state. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

G. Real and tangible personal property is located in this State as provided in section 5206-D, subsection 11, paragraph D. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

[1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF) .]

4. Payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both in and outside this State during the taxable year. The payroll factor includes only that compensation that is included in the computation of the apportionable income tax base for the taxable year. Eighty-five percent of any amounts paid pursuant to a contract by the taxpayer to an employee-leasing company for leased employees, and 100% of the amount paid pursuant to a contract to a temporary services company for temporary employees, must be included in the taxpayer's payroll factor. The payroll factor of an employee-leasing company or a temporary services company must exclude compensation paid to leased or temporary employees who are providing personal services to client companies.

A. The compensation of any employee for services or activities that are connected with the production of income that is not includable in the apportionable income base and payments made to any independent contractor or any other person not properly classifiable as an employee are excluded from both the numerator and denominator of the factor. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

B. Compensation is paid in this State if any one of the following tests, applied consecutively, is met.

(1) The employee's services are performed entirely in this State.

(2) The employee's services are performed both in and outside the State, but the service performed outside the State is incidental to the employee's service in the State. For the purposes of this subsection, "incidental" means any service that is temporary to transitory in nature or that is rendered in connection with an isolated transaction.

(3) If the employee's services are performed both in and outside the State, the employee's compensation is attributed to this State:

(a) If the employee's principal base of operations is in this State;

(b) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this State; or

(c) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed, but the employee's residence is in this State. [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

[2001, c. 439, Pt. D, §5 (AMD); 2001, c. 439, Pt. D, §9 (AFF) .]

5. Variations. If the apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, or the State Tax Assessor may require, in respect to all or any part of the taxpayer's business activity:

A. Separate accounting; [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

B. The exclusion of any one or more of the factors; [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

C. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this State; or [1997, c. 404, §5 (NEW); 1997, c. 404, §10 (AFF).]

D. The employment of any other method to effectuate an equitable apportionment of the taxpayer's income or assets. [2005, c. 608, §4 (AMD); 2005, c. 608, §5 (AFF).]

[2005, c. 608, §4 (AMD); 2005, c. 608, §5 (AFF) .]

SECTION HISTORY

1997, c. 404, §5 (NEW). 1997, c. 404, §10 (AFF). 1997, c. 746, §18 (AMD). 1997, c. 746, §24 (AFF). 2001, c. 439, §D5 (AMD). 2001, c. 439, §D9 (AFF). 2005, c. 608, §§2-4 (AMD). 2005, c. 608, §5 (AFF).

§5206-F. TIME FOR FILING RETURNS

The franchise tax return required by section 5220, subsection 6 must be filed on or before the 15th day of the 3rd month following the end of the financial institution's fiscal year. [2003, c. 588, §17 (AMD).]

SECTION HISTORY

1997, c. 746, §19 (NEW). 1997, c. 746, §24 (AFF). 2003, c. 588, §17 (AMD).

§5206-G. COMBINED REPORTS

The combined report required by section 5220, subsection 6 must include, both in the aggregate and by entity, a list of the net income or loss per books, the property, payroll and receipts in Maine and everywhere as defined in this chapter and the Maine net income of the unitary business. Neither the income nor the property, payroll and receipts of an entity that is not required to file a federal income tax return or whose income is not subject to federal income tax as income to its direct or indirect owners may be included in the combined report. [1997, c. 746, §19 (NEW); 1997, c. 746, §24 (AFF).]

In determining Maine assets or Maine net income for purposes of filing a combined report, intercompany eliminations must be made as necessary to avoid the duplication of income or assets. [1997, c. 746, §19 (NEW); 1997, c. 746, §24 (AFF).]

SECTION HISTORY

1997, c. 746, §19 (NEW). 1997, c. 746, §24 (AFF).

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